

Howard Press, Inc. and Local One, Amalgamated Lithographers of America, a/w International Typographical Union, AFL-CIO. Cases 22-CA-9388, 22-CA-9647, and 22-RC-7881

December 16, 1982

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN

On March 26, 1981, Administrative Law Judge Jerry B. Stone issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, only to the extent consistent herewith, and to modify his recommended Order.

The Administrative Law Judge concluded, *inter alia*, that Respondent violated Section 8(a)(3) of the Act in discharging employees Doklia, Moss, and Blechar; and that the Petitioner's Objections 4 and 5 in Case 22-RC-7881, alleging those discharges as objectionable, should be sustained. He further concluded, based upon his finding the unfair labor practices pervasive, that a bargaining order was warranted under the first criterion set forth by the Supreme Court in *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969). Respondent has excepted, *inter alia*, to these findings,¹ and we find merit in certain of Respondent's exceptions.²

Briefly, beginning in early 1979, drug-related graffiti appeared with increasing frequency on the walls of Respondent's plant restrooms, which eventually caused Respondent to have the cleaning service wash down the walls every night and required almost weekly painting. Respondent's management also began receiving rumors of drug use from many of the employees to the effect that some people were taking drugs—primarily smoking marijuana. Some members of management began smelling the odor of marijuana in the men's room, and also received complaints about such odor in the ladies' room as well. From January apparently

through April, Respondent discharged some employees suspected of drug usage and, according to Respondent President Porter, "Each time we discharged someone, we felt that the problem would end. It didn't. It continued. We were unable to ascertain who exactly was doing all of this." In May, Porter called on the local chief of police to obtain his assistance.³ He recounted the situation and his concerns, explaining that Respondent had several minors working at the plant, and that he had let three people go, but the problem persisted. The chief brought in a narcotics detective, Beckman, who, after some discussion, asked Porter to prepare a list of employee names and addresses for the police department. Porter did so, and about 2 days later returned to Beckman's office. Beckman looked at the list and stated that a few of the names were familiar to him and that he personally had arrested Doklia for drugs.⁴

Late in the afternoon on June 1, Porter, who was away from the plant at the time, received a phone call from his office informing him that the police had arrested several people at the plant. Porter returned immediately to his office, where Plant Manager Polizzano informed him that employees Doklia, Blechar, Moss, DeLuca, Warvel, and Perlach had been arrested. Perlach had returned to the plant just before Porter, and had already talked to Respondent's supervisors. Porter talked to him briefly, and asked what had happened. Perlach said that he had been arrested but he was innocent and he had been released and had come back to work; but he was upset, had pinched a finger between two rollers, and was going to go home.

Approximately 45 minutes later, while Porter, Polizzano, and Porter's assistant Birney were talking, employee Warvel arrived with his wife and asked if he could speak to them, whereupon all five went to Respondent's conference room adjacent to Porter's office. Warvel said he had been arrested but he was innocent and was concerned about his job. He was asked if he knew Respondent's policy in regard to using drugs, and he stated "yes," that "you would be fired." He maintained that he and employee Perlach did not smoke marijuana, but conceded that Doklia, Blechar, Moss, and DeLuca usually smoked it at lunchtime in Doklia's van in Respondent's parking lot. He said he had seen Doklia in jail, and the latter had said he would tes-

¹ No party has excepted to the Administrative Law Judge's recommended dismissal of the allegation that Respondent violated Sec. 8(a)(3) in discharging employee Peter Schulz.

² Chairman Van de Water would also dismiss the 8(a)(1) allegations based on pre-petition speeches delivered by Respondent.

³ This was not an atypical occurrence. Porter had successfully sought police assistance concerning prior problems; e.g., traffic congestion near Respondent's loading dock, employees being followed, and damaged equipment in the plant.

⁴ It is not contested that management was unaware of any prior arrests of Doklia.

tify that Warvel was innocent. Warvel further indicated that he believed the others were still in jail because they had marijuana on them when they were arrested, and he understood that they had been watched by the police because Doklia had been in trouble before. Porter told Warvel that if he was innocent he had nothing to worry about, but Polizzano indicated that Warvel should probably not come into work as scheduled the following day. Warvel and his wife then left.

A few minutes later, while Porter, Birney, and Polizzano were conferring, Moss and DeLuca walked in and asked if they could talk. Porter agreed, asked what had happened, and Moss responded that they had "got busted for smoking pot." Porter asked, "were you," and they both responded "yes." Porter asked about the others involved. Moss and DeLuca indicated that Doklia and Blechar had been smoking marijuana but they were not sure about Perlach and Warvel. Porter asked if the two knew Respondent's policy regarding the use or possession of drugs, and they responded that they did. Porter told them that, just prior to their arrival, he, Polizzano, and Birney had decided to suspend everyone who was involved in the arrest until Respondent obtained further information and decided what to do. The two were asked if they had been smoking pot in the ladies' room and they responded "no, not in the ladies' room," just in Doklia's van, usually at lunch or breaktime. Polizzano asked how often; DeLuca responded pretty often, and Moss said several times a week. The two left shortly afterward.

The following morning, June 2, Respondent called Doklia and Blechar at their homes. Birney talked to their mothers who informed him that they were unavailable to answer the phone. He asked that both Doklia and Blechar call him at Respondent's plant, emphasizing that it was important. Neither Doklia nor Blechar returned Respondent's telephone call, or came to the plant to talk with Respondent's management.

Also on June 2, Respondent sent identical telegrams to all six employees, informing them that they were suspended without pay. About June 6, Respondent reinstated Warvel and Perlach, who said that the police charges against them had been dismissed. Both wrote out statements to the effect that they had neither sold nor used nor been under the influence of any drugs, including marijuana, on Respondent's premises.⁵ Respondent subsequently

obtained a copy of a police report indicating that several police officers had executed arrest warrants on June 1 for Doklia, Blecher, Moss, and DeLuca, that Perlach and Warvel were also arrested, that certain evidence including four marijuana pipes, a container containing vegetation and marijuana type cigarettes were taken from the pocketbook of Moss, and that execution of search warrants for Doklia's van and his room at his place of residence resulted in the confiscation of purported marijuana and related paraphernalia.⁶ Thereafter, on July 2, Respondent sent identical termination letters to Doklia, Blechar, and Moss, citing their arrests for use of drugs on company property.

The Administrative Law Judge concluded that an issue in the case is whether Respondent had a rule prohibiting employee usage of drugs. Noting the lack of dispute that such possession was prohibited by law, he was persuaded, based on credited testimony, that Respondent did have such a rule, and we adopt that finding. Thus, he found that, during the month of May, Doklia, Blechar, Moss, DeLuca, and others would meet in Doklia's van at lunch and/or breaktime, and that apparently on most of these occasions Doklia, Blechar, Moss, and DeLuca smoked marijuana, and also discussed the Union. He also found that Warvel, Perlach, Moss, and DeLuca told Respondent's supervisors, in composite effect on the evening of June 1, that although Doklia, Blechar, Moss, and DeLuca smoked pot on such occasions, Warvel and Perlach did not; and that the employees knew it was the Company's policy to fire employees who used or had possession of drugs on company premises. The Administrative Law Judge, however, further concluded that "Respondent treated Doklia, Blechar, and Moss in a disparate manner on June 2 and July 2,"⁷ and that the three were actually discharged for having engaged in union activity. We do not agree.

Initially, we view the Administrative Law Judge's conclusion that Respondent treated Doklia, Blechar, and Moss in a disparate manner on June 2 as inappropriate in two respects. First, we note that the General Counsel did not allege Respondent's suspension of the six employees on June 2 as violative of the Act. Second, assuming such violations were alleged, we would not deem the suspension of Doklia, Blechar, and Moss disparate here, where all of the six arrested were suspended, including

⁵ DeLuca apparently pleaded guilty to the charges against her and resigned from Respondent's employ between June 2 and June 6. Porter was inclined to discharge Doklia, Blechar, and Moss at the time Warvel and Perlach were reinstated, based on the information that Respondent already had; but, because they were involved in a union organizing drive,

Respondent's counsel advised that they be left on suspension at that time, and Porter accepted counsel's advice.

⁶ It appears that the warrants were obtained following police surveillance, including photographing those involved.

⁷ By their June 2 suspensions without pay, and their July 2 termination for the use of drugs on company property.

those two who had already indicated to Respondent that they were innocent of any wrongdoing, as well as the four who were assertedly at the nucleus of the ongoing unlawful activity.

The Administrative Law Judge also relied on the fact that "the number of employees who work at the Pennsylvania Street plant is small, around 20 employees." He concluded it was therefore "proper to infer" that Respondent had a belief that Doklia, Blechar, and Moss were smoking marijuana in Doklia's van when Respondent contacted the police concerning a drug problem; and he appeared to criticize Respondent for contacting the police about the drug problem rather than giving a speech or posting notices, which we deem inadvertent. While we question the appropriateness of applying the "small plant" doctrine to infer knowledge by Respondent of unlawful activity which the participants attempted to maintain in secrecy, as the record shows, we find it unnecessary to resolve the question in the instant proceeding, since the record also shows the underlying premise for the Administrative Law Judge's inference to be incorrect. Thus, the total number of employees working at the Pennsylvania Railroad Avenue plant, as opposed to the lithographic production employees, was actually about 100 at the time of the events herein, with approximately 25 additional employees working at the West Elizabeth Avenue location some three blocks away.

The Administrative Law Judge's conclusion that Respondent's past practice revealed that employees were discharged only when drug usage affected their faculties or work performance is similarly unpersuasive, and in our view is not supported on this record. Thus, the Administrative Law Judge's discussion does not appear to take into account discharges of other individuals in the spring of 1979 prior to Respondent contacting the police.⁸ Further, we find no indication that Doklia, Blechar, and Moss⁹ were treated in a disparate manner *vis-a-vis* other employees who might be arrested at Respondent's premises, charged, and apparently convicted of such drug usage and subsequently returned to work,¹⁰ as there is no evidence of such occurrence.

⁸ In connection with this matter, we do not adopt the Administrative Law Judge's interpretation of the incidents concerning employees Rivera and Rodriguez and Bindery Supervisor Williams.

⁹ Or, for that matter, DeLuca.

¹⁰ It appears uncontested, as the Administrative Law Judge found, that Respondent was informed on the evening of June 1 that Warvel and Perlach were not smoking pot in Doklia's van with the others. Warvel and Perlach both asserted their innocence to Respondent's supervisors, and apparently informed Respondent that the charges against them had been dismissed by the time they were reinstated. The record indicates that Doklia, Blechar, and Moss were subsequently denied unemployment benefits by the State on the ground that their arrests and conviction for

For the reasons set forth above, we do not adopt the Administrative Law Judge's conclusions that the three employees were discharged in order to discourage union activity. In sum, we find, contrary to the Administrative Law Judge, that Respondent discharged Doklia, Blechar, and Moss because of the information conveyed to Respondent that those employees had used marijuana on company premises, and were arrested at said premises for that reason. Accordingly, we dismiss in their entirety the complaint allegations pertaining to the discharges of Doklia, Blechar, and Moss. Having dismissed those allegations, we also do not adopt the Administrative Law Judge's finding that the discharges were such "pervasive" unfair labor practices as to clearly require a bargaining order under the first criterion in *Gissel Packing Co., supra*.¹¹ Accordingly, contrary to the Administrative Law Judge, we dismiss the 8(a)(5) allegation as well.¹²

Similarly, having concluded that Respondent's discharge of Doklia, Blechar, and Moss did not violate Section 8(a)(3) of the Act, we shall overrule the Petitioner's Objections 4 and 5 in Case 22-RC-7881, which were premised on those discharges.

Finally, as the Union lost the representation election by a vote of 15 to 6, and there are no other outstanding objections besides those consolidated herein and overruled in this proceeding, we shall certify the results of the election.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Howard Press, Inc., Linden, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as modified below:

1. Delete paragraphs 1(a) and (b), and reletter the remaining paragraphs according.
2. In the last paragraph of section 1 of the recommended Order, delete the words "In any other

drug usage at Respondent's premises constituted adequate grounds for discharge.

¹¹ Inasmuch as we have reversed the Administrative Law Judge's finding on the merits of the discharges, we find it unnecessary to determine in this proceeding whether the three discharges would constitute such "pervasive" unfair labor practice as to require a *Gissel* first-criterion bargaining order.

¹² In view of our disposition of the matter on this ground, we find it unnecessary to pass on Respondent's contentions regarding the appropriate unit. In this regard, we note that a part of the record was apparently misplaced for some time, and while a portion dealing with the representation proceeding has not been received, we find no prejudice obtains in view of the above conclusions.

manner" and substitute therefor "In any like or related manner."

3. Delete paragraphs 2(a), (b), (c), (d), and (e), and reletter the remaining paragraphs accordingly.

4. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that Objections 3, 4, and 5 in Case 22-RC-7881 be, and they hereby are, overruled in their entirety.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Local One, Amalgamated Lithographers of America, a/w International Typographical Union, AFL-CIO, in the election held in Case 22-RC-7881, and that said labor organization is not the exclusive representative of all employees in the unit herein involved within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT threaten employees with loss of jobs and other reprisals because of their union or protected concerted activities.

WE WILL NOT create the impression that we keep under surveillance our employees' activities in support of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such rights may be affected by lawful agreements in accordance with Section 8(a)(3) of the Act.

All our employees are free to become or remain, or refrain from becoming or remaining, members of any labor organization, except to the extent provided by Section 8(a)(3) of the Act.

HOWARD PRESS, INC.

DECISION

STATEMENT OF THE CASE

JERRY B. STONE, Administrative Law Judge: This proceeding, under Section 10(b) and Section 9 of the National Labor Relations Act, as amended, was heard pursuant to due notice on March 3, 4, 18, 19, 20, 21, and April 3, and 4, 1980, at Newark, New Jersey.

The charge in Case 22-CA-9388 was filed on July 26, 1979. The complaint in Case 22-CA-9388 was issued on September 28, 1979. The issues concern whether Respondent has (1) violated Section 8(a)(3) and (1) of the Act by discharging employee Peter Schulz on May 19, 1979, and by discharging Leann Moss on July 2, 1979, and (2) violated Section 8(a)(4), (3), and (1) by discharging employees Michael Doklia and Judith Blechar on July 2, 1979, and (3) violated Section 8(a)(1) of the Act by warnings of reprisals, by creation of impression of surveillance of employee union activities, and by solicitation of grievances.

The petition in Case 22-RC-7881 was filed on May 14, 1979. The election in Case 22-RC-7881 was held on November 2, 1979. Timely objections to such election concern the discriminatory discharge of Peter Schulz, Michael Doklia, Judith Blechar, and Leann Moss. Thereafter Cases 22-RC-7881 and 22-CA-9388 were consolidated on January 11, 1980.

The charge in Case 22-CA-9647 was filed on December 10, 1979. Thereafter on January 20, 1980, an order consolidating Cases 22-CA-9388, 22-CA-9647, and 22-RC-7881 was issued along with a first amended complaint and notice of hearing. Said first amended complaint included the same issues previously set forth for the complaint in Case 22-CA-9388, and added issues as to a certain alleged appropriate bargaining unit, majority status of the Union, demand for bargaining, and a refusal to bargain, all related to an alleged violation of Section 8(a)(5) and (1) of the Act.

All parties were afforded full opportunity to participate in the proceeding. Briefs have been filed by the General Counsel and Respondent and have been considered.

Upon the entire record in the case and from my observation of witnesses, I hereby make the following:¹

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER²

Howard Press, Inc., Respondent, is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New Jersey. At all times material herein, Respondent has maintained its principal office and place of business at 104 Pennsylvania Railroad Avenue, Linden, New Jersey, herein called the Linden plant, and is now, and at all times material herein has been continuously, engaged at said plant in the business of providing and performing printing services and related services. Respondent's Linden plant is its only facility involved in this proceeding.

In the course and conduct of its business operations, Respondent, during a representative 12-month period, caused to be purchased, transferred, and delivered to its Linden plant, paper, ink, machinery, and other goods

¹ Transcripts of the representation hearing were received as ALJ Exh. 1. By inadvertence, Respondent's motion to correct transcript, dated April 22, 1980, was marked as ALJ Exh. 1 but is hereby corrected to be marked as ALJ Exh. 1B.

² The facts herein are based upon the pleadings and admissions therein.

and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported to said Linden plant in interstate commerce directly from States of the United States other than the State of New Jersey.

As conceded by Respondent and based upon the foregoing, it is concluded and found that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED³

Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES; OBJECTIONS TO ELECTION

A. Preliminary Issues; Supervisory Status⁴

At all times material herein, the persons named below occupied the positions indicated and have been and are now supervisors within the meaning of Section 2(11) of the Act, and have been and are now agents of Respondent acting on its behalf.

Herbert Porter	President
Norman Birney	Executive assistant to the president
Joseph Polizzano	Production manager
Gordon Eitel	Production and planning supervisor
Harry Good	Press room supervisor
Bill Williams	Bindery supervisor

B. Commencement of Union Activity

It appears that at some point of time before May 7, 1979, Mike Doklia, an employee of Respondent, contacted Burke, an official of Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO. Thereafter, it appears that Doklia received some union cards and solicited successfully at least one employee to sign a union authorization card on May 7, 1979, before a union meeting scheduled for around 5 p.m. on May 7, 1979.⁵ It also appears that around 2 weeks before May 7, 1979, some of the employees talked about joining the Union. It is noted these employees were part of a bargaining unit consisting of around 20 employees. It appears clear that Respondent became aware of its employees talking about the Union prior to May 7, 1979.⁶

³ The facts are based upon the pleadings and admissions therein.

⁴ The facts are based upon the pleadings and admissions therein.

⁵ The facts indicate that the first union cards were executed on May 7, 1979.

⁶ The parties presented few details about the union activity preceding May 7, 1979. Considering such meager details as were presented in the context of Respondent's May 7, 1979, speeches to employees, inferences are drawn as to such facts as found not based on precise evidence.

C. Respondent's May 7, 1979, Speeches

On May 7, 1979, President Porter delivered two speeches to employees. The first speech was delivered to one employee group. The second speech, essentially similar to the first speech, was delivered to a different employee group. Following these two speeches, Norman Birney, executive assistant to the president, delivered essentially the same speech to a different employee group.

Respondent's witnesses Porter and Birney essentially testified to the effect that Porter read a written prepared speech for the first speech delivered by Porter excepting for statements made by Porter to employees concerning an answer to a question and that, in such statement, Porter referred to Doklia and Judy (Blechar). As to such statement, Porter testified that the same was reduced to writing and incorporated into his second speech to employees. Porter, Birney, and Polizzano testified to the effect that Porter read a written prepared speech for his second speech to employees. Polizzano's testimony, however, revealed that Porter spoke of "beefing up" benefits with reference to statement about a "pension plan" and unfair labor practices.

Doklia, Blechar, and Schulz testified to the effect that Porter appeared to read and to speak without reference to reading. Doklia, Blechar, and Schulz also testified to statements made by Porter which were different from statements in Porter's written prepared speech. Thus, Schulz testified to the effect that Porter stated that he was thinking of beefing up the employees' benefits, that the employees would have to wait a little longer because the money that could be used for such purpose was being used as legal costs to fight the union organizational effort. Sudnik, a witness for Respondent, testified to the effect that Porter appeared to be reading a speech from prepared notes on yellow paper. Sudnik also testified that he did not recall Porter's mentioning "beefing up any benefits," that charts were not used, and that Porter did not mention any names.⁷

Much of the testimony of Doklia, Blechar, and Schulz as to Porter's speeches appears to be a reasonably accurate characterization of what Porter testified was a written prepared speech. Considering this, I am persuaded that the major portions of Porter's speeches were as testified to by Porter. Doklia, Blechar, and Schulz appeared to be honest and truthful witnesses. As to most of their testimony that differs from Porter's, the difference appears to result from mere lack of perfect recall.

Considering the foregoing, I find the speeches of Porter to be as testified to by Porter excepting with respect to the statements concerning the beefing up of benefits. With regard to such testimony relating to the

⁷ Respondent's brief asserts that Sudnik was present for the same speech where Doklia and Schulz were present. The testimony of witnesses setting forth the names of employees at each of Porter's two speeches seems to indicate, by omission of Sudnik's name, that Sudnik was not present on such occasion. Other evidence seems to indicate that Sudnik worked on a different shift from that of Schulz. Sudnik did not testify to the names of other employees present with him at the time that he heard Porter's speech. It appears that Sudnik may have been present for the speech given by Birney. Whether Sudnik was present for one of Porter's speeches or for the speech by Birney, the ultimate findings would be the same.

beefing up of benefits, I am persuaded that Polizzano's testimony supports Doklia's and Schulz's testimony and that Porter did make remarks in addition to those reflected in his written prepared speech.⁸

Considering the foregoing, I conclude and find that Porter, in his speech delivered to employees Doklia, Schulz, and others, made statements relating to beefing up benefits as is revealed by the following credited excerpts from Schulz's testimony.

... and that he had mentioned that he was thinking about beefing up our benefits—we already had a hospitalization plan but he knew the employees wanted something more, like a pension plan or a dental plan and he said they would have to wait a little while longer because the money that could have been used for there was being used as far as legal costs to fight this.

Q. To fight the organization?

A. Yes, to fight the organization.

Otherwise, I find that Porter's speeches were as testified to by him and I discredit the testimony of Doklia, Blechar, and Schulz inconsistent with the facts found. I do not find it necessary to set out in its entirety the speech as made by Porter. However, considering the issues as alleged, I find it proper to set forth the following excerpts from the exhibit containing the written speech which was read to employees:⁹

Here are some economic facts—some you know, some you may not, but ALL you should remember: (1) Howard Press's market is basically one color, black & white, commercial printing for major national companies like W.E., IBM, AT&T, NJB, & RCA. About 95% of our sales volume is based upon one type or another of such agreement, or contract.

Who wants to take a stab at who our biggest customers? What is our biggest "contract" agreement? O.K. we'll get back to it later, but W.E. to whom we bill all the AT&T training work we ship to Indianapolis every Monday is our largest—and that business accounts for about 50% of our total sales. As I said, I'll get back to that later. . . .

We compete for our sales, with pretty much the same companies all the time. They are of a similar size, with generally similar equipment and product lines. They are:

Confort (NYC)
Swift (NYC)
Business Offset (Irvington)
Johnson Letter (Newark)
Woodbridge Litho (Woodbridge)
Compton Press (Morristown)
Alvin Bart (Bronx)

⁸ Although Porter, Birney, and Polizzano appeared to be witnesses attempting to tell the truth, I am persuaded that such individuals had rationalized that, in substance, Porter had not deviated from the written text of his speech. I discredit the testimony of Porter, Birney, and Polizzano inconsistent with the facts found.

⁹ The speech as a whole is incorporated in this Decision by reference.

Great Eastern (Long Island)

All of them do similar, relatively simply B&W printing for major national companies—and all of them are non-union! There was one other: LPM (in Long Island), and, interestingly, that may be one of the reasons we first became a "target" company for ALA. . . .

The AT&T training course business we now enjoy, was once done primarily by LPM. We did a small amount of it; Great Eastern did some of it (I think Swift did a little too)—but LPM did more than all of us put together. A fellow named Andy owned LPM. I've known him (tho' not intimately) for about 20 years. LPM was an organized shop. I wasn't *THERE* (of course) but was told Andy went to W.E. and said he had to increase his prices on his AT&T training contract business. W.E. compared his proposed increased prices with the current prices of other contract printers—[the PVC virtually dictates the Bell System buy, at the lowest bid price]. And, while I'm not "privy" to W.E.'s "sanctum-sanctorum," I understand simply said: Sorry Andy, but they could buy the same product elsewhere for less—and would have to take their business away. Anyway, W.E. offered us 1/2 of LPM's business, and Great Eastern the other 1/2. We both accepted. (I told Andy I was sorry; he said no hard feelings.) LPM closed its doors and went out of business completely, soon after they lost the AT&T training course volume. *We*, on the other hand—expanded dramatically.

The contract LPM had taken away (that went to us) expired this past December of 1978. We now have a new, three year contract from 1/1/79 thru 12/31/81. We have 65% of the grand total volume (an increase over what we had before). Four other printers share the remaining 35%. The bidding for our new contract was very close:

Our bid was evaluated at	\$2,640,000.00
Our next competitor bid	2,680,000.00

The other three successful bidders were similarly close. Less than 1-1/2% is separating the competition.

What do you suppose would happen if Howard Press was "organized," and agreed to a union's economic demands which resulted in higher operating costs and forced us to raise our prices? Could we go to W.E. to get a price increase to offset our increased operating costs? What would W.E. do? I leave that to you . . . If W.E. refused, the business could be moved to one (or others) of the contract printers.

Our oldest contract is for producing W.E. letterheads. It expires the end of this month. We are not getting a renewal of it. We did a good job for six

years—but W.E. can buy letterheads more economically now in North Carolina.

Our contract for producing the forms of NJB expired April 30th just past. I have agreed to a 3 month extension, at our current prices, to August 1, 1979. I'm concerned insofar as getting a full contract renewal for a 2 or 3 year term—and that business represents about 15% of our total sales.

These are economic facts (not fancy) we have to face. Would you like some more? O.K. We print the NJB Addenda Directory at 1101. Some of you know how we got that contract. The Courier-Citizen Company in Hamden, Conn. had printed these books for years. C-C had some on-going labor dispute that disrupted the production delivery cycle of these books that are used by the Information Operators. (Someday I'd like us to print the regular phone books—the subscriber directories you all have in your homes). So, when I was asked if we'd like to take over the C-C work, I said YES! It cost us a lot of \$ to start up. It cost us a lot more \$ to get the program under control—but, I felt it was a good "investment for our future"—an opportunity to work with Directory Buying personnel we might otherwise have had to wait 10 years for.

Our contracts require notification to our clients of any impending "labor situation" that could result in the flow of their work being disrupted. Our clients are not *dummies*! They must be prepared to move their business elsewhere, if any vendor is unable to produce for any reason—and they are. . . . If we sought an inordinate price increase, or had a work stoppage—what would they do? I leave it to you!

Now, am I saying a union organizes a company to put it out of business? *Of course not!* Am I saying a company will go out of business just because it's organized? Again, *of course not!* Companies do not go out of business because of union organization! Companies go out of business when they can no longer compete! It happened to the company Joe, Ed, Al & I worked for 15 years for, and had almost 2000 employees. And, to Quinn & Boden down the street in Rahway where Maryann's father had been a pressman for 25 years. And, the company Harry Good was the union delegate for. And, to countless others, union and non-union, that simply were no longer able to compete in the market place.

It's an irrefutable fact, that every dollar we get here, comes from printing the work of our clients. And, if our costs and prices get higher than our competition's, that business will leave us, and go to them, and so will our dollars.

Years ago, Eddie Swayduck (ALA's president at-that-time) told me "their philosophy was going to be to make demands so great that it would force the employers to become more efficient in order to meet them. As a young man a rookie in this industry—I was very impressed. But it didn't work. It was bullshit then—and it is now! NYC printers became less competitive, and such business as could be done out of the metropolitan area more economi-

cally, left it. We saw printer after printer in NYC either go out of business or move away—and NYC which had been #1 in printing volume for decades, dropped, and kept dropping until today (I believe) NYC is ranked only 8th or 9th.

The evidence relating to the speech delivered by Norman Birney is limited to establishing that Birney read the written prepared speech, as had been used by Porter, to an employee group on May 7, 1979.

Contentions and Conclusions

- 1. The General Counsel contends, and Respondent denies, that Porter and Birney, in their respective speeches, warned Respondent's employees that they would suffer economic reprisals and adverse economic consequences if they became or remained members of the Union or gave any assistance or support to the Union.

Respondent's economic message as presented by Porter and Birney has been set out above. The message is cleverly set forth but does not reveal itself to be based upon objective facts. Nor does the message reveal that the economic reprisals or adverse consequences are matters resulting from actions of those other than Respondent. Respondent's message in total revealed a threat that unionization meant loss of jobs. Further, Respondent's message actually revealed that it was speaking of resultant action flowing from agreements on economic measures that Respondent would be free to bargain about. Respondent's conduct in totality reveals a threat of loss of jobs if the employees became unionized. Such conduct constitutes conduct violative of Section 8(a)(1) of the Act.¹⁰

- 2. The General Counsel alleges and contends, and Respondent denies, that Respondent created the impression that it was keeping its employees' activities in support of the Union under surveillance.

As indicated previously, I found that the major portions of Porter's and Birney's speeches were as testified to by Porter (and Birney). For consideration of this issue, I find it proper to set forth the following excerpts from the written speech used by Porter and Birney. Such excerpts reveal the portions of the speech as made and having bearing on the issue herein.

Unions seem to usually wait about a year between unsuccessful drives, and then come back. When they come back they often use another common technique, which is (2) Contact the employees whose names they'd gotten during the prior unsuccessful campaign, and try to recruit a receptive worker (or two, or three) to "talk up union,"

¹⁰ *Blazer Tool & Mold Company, Inc.*, 196 NLRB 374 (1972). I would note also that Respondent in its speech set forth that it could replace economic strikers and that it would not be necessary for the Company to rehire any employee who was an economic striker who had been replaced. Board and court law reveals such to constitute an inaccurate statement of the rights of economic strikers. See *Laidlaw Corporation*, 171 NLRB 1366 (1968). Such statement constitutes additional conduct supportive of the finding that Respondent threatened employees with loss of jobs in violation of Sec. 8(a)(1) of the Act.

give out cards, set up meetings, and help do the selling for them.

* * * * *

While many unions make much of FEAR in their organizing drives—they had nothing to fear *here*. As example—since the last organizing drive until now we had adequate cause to fire Mike Doklia if we'd chosen to—and it wouldn't have been construed as an unfair labor practice—or Judy (too) who presumably feels the same as Mike (active in last year's drive). YET, each of them has progressed nicely in the last 12-14 months with promotions, salary increases, and the like—and have been treated as cordially, considerately, and as much dignity as all the other employees.

Considering the foregoing, I am persuaded that Respondent, by Porter and Birney, in total effect told employees that Respondent knew that Doklia had been active in the union campaign the year before, believed that Judy Blechar felt the same way about the Union as did Doklia, and believed that the Union would again attempt to utilize the services of Doklia in the instant campaign. Considering the foregoing, I am persuaded and conclude and find that the facts establish, as alleged, that Respondent, by Porter and Birney, created the impression that it was keeping under surveillance its employees' activities in support of the Union.

3. The General Counsel alleges and contends and Respondent denies that Respondent, by Porter and Birney, solicited grievances from its employees.

The credited facts concerning the speech simply reveal that Respondent, by Porter and Birney, indicated to employees that Respondent would answer any questions. Considering the speech as a total, the facts do not indicate a solicitation of grievances.¹¹

Considering the foregoing, the facts do not reveal that Respondent, by Porter or Birney, solicited grievances from its employees. Accordingly, it will be recommended that allegations of conduct violative of the Act in such regard be dismissed.

4. The General Counsel alleged and Respondent denied that Respondent, by Birney and Porter, in the first week of May 1979, promised benefits to its employees.

As has been indicated, the credited facts reveal that President Porter told employees in one speech that he had been thinking about beefing up their benefits, that he knew employees wanted something like a pension plan or dental plan, that, however, employees would have to wait a little while longer because the money that could have been used for such beefing up of benefits was being used for legal costs to fight the Union. The sum effect of such remarks constitutes an implied promise of benefits when the union problem would be resolved. Respondent, by such conduct, engaged in conduct violative of Section 8(a)(1) of the Act.

¹¹ Doklia's testimony in support of the General Counsel's contentions as regards solicitation of grievances is discredited.

D. Events May 7-14, 1979; Union Meeting May 7, 1979, and Related Activities

As indicated, a union organizational meeting was held on May 7, 1979, around 5 p.m. In attendance at such meeting were Eugene Burke, vice president of Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, and certain employees of Respondent. Such employees were Michael Doklia, Judith Blechar, Leann Moss, Peter Schulz, Louis DeFroschia, Mark Lukacs, Robert Moritz, Aldo Velez, James Warvel, Peter Veltre, and Sharon DeLuca. The above-named employees on such date signed authorization cards and such signed and dated cards were given to Burke. Doklia also gave Burke the signed and dated authorization cards of employees Mark Perlach and Francisco Cristobal.¹²

During the above referred to May 7, 1979, union meeting, an organizing committee was formed.

On May 9, 1979, Burke advised Respondent of some of the members of the organizing committee as is revealed by the following letter:

May 9, 1979

Mr. Herbert Porter, Jr.
President
Howard Press
104 Penna R.R. Avenue
Linden, New Jersey 07036

Dear Mr. Porter:

Enclosed is a partial list of the inner working committee, employed at your plant, whose assistance I have obtained to seek a National Labor Relations Board Election.

A duplicate copy has been sent, registered mail, to the National Labor Relations Board for their protection.

Committee
Michael P. Doklia
Peter M. Schulz
Judith Blechar
Leann Moss
Peter A. Veltre, Jr.

Sincerely,
Eugene A. Burke
Vice President

It is established that Respondent received the above letter on or about Friday, May 11, 1979.

On May 9, 1979, the Union transmitted the following letter to Respondent concerning the filing of a petition with the National Labor Relations Board:¹³

¹² Authorization cards whereby employees authorized the Union to be the employees' collective-bargaining agent.

¹³ The complaint alleges and Respondent's answer admits that the Union, on or about May 9, 1979, requested Respondent to bargain collectively with respect to pay, wages, etc., as the exclusive collective-bargaining representative of all employees of Respondent in the bargaining unit alleged to be appropriate in this case.

May 9, 1979

Mr. Herbert Porter, Jr.
HOWARD PRESS
104 Penna R.R. Avenue
Linden, New Jersey 07036

WE HAVE THIS DAY FILED A PETITION WITH THE NATIONAL LABOR RELATIONS BOARD FOR AN ELECTION AMONG YOUR LITHOGRAPHIC PRODUCTION EMPLOYEES, A MAJORITY OF WHOM HAVE AUTHORIZED US TO BARGAIN FOR THEM. WE WILL GLADLY WITHDRAW THE PETITION IF YOU WILL MEET WITH US AT YOUR CONVENIENCE FOR NEGOTIATION OF A COLLECTIVE BARGAINING AGREEMENT.

Sincerely,
Eugene A. Burke
Vice President

On May 14, 1979, the Union filed a representation petition in Case 22-RC-7882, with the employer being Howard Press, address 104 Penna R.R. Avenue, Linden, New Jersey, and the unit described as—Included, "All lithographic production employees" and excluded "All bindery employees, cutters, office clericals, all other employees, guards and supervisors within the meaning of the Act."

On May 14, 1979, Respondent declined to bargain with the Union as is revealed by the following letter:

May 14, 1979
Local 1
Amalgamated Lithographers of Amer.
113 University Place
New York, New York 10003
Attention: Mr. Eugene A. Burke
Dear Mr. Burke:

I have been instructed to inform you that my client declines to meet and bargain with you at this time as requested by your letter of May 9, 1979.

Should you after a duly held election become certified by the N.L.R.B., we of course will be glad to meet and bargain with you at that time.

Very truly yours,
Edward N. Schwartz

E. Termination of Peter Schulz Employment—October 1977 to May 21, 1979

Peter Schulz was hired by Respondent in October 1977, as a trainee and helper at the minimum rate for wages of \$120 per week. There was, however, an understanding that there would be a wage increase of \$20 per week within 30 days if Schulz' work was satisfactory. Schulz received such wage increase around 30 days after his initial hiring. Schulz mainly worked as a trainee and helper on a "Miller" press during his first 8 months as an employee. During such time, for brief periods, Schulz

was used on other machines. Around 8 months after Schulz was hired, Schulz was promoted to the position of pressman. From the time of such promotion until his discharge, Schulz continued to work on the same Miller press.

During Schulz' time as a pressman, several helpers were assigned to work for Schulz. Some of the helpers did not like to work for Schulz and complained to supervisors about the way Schulz spoke to them. The directions given by Schulz to such helpers, however, appear to have been warranted. It is clear that Schulz and some of his fellow employees were not on the best of terms. Despite this, the only written reprimand given to Schulz concerned an incident in November 1978, when Schulz threw a wrench at a fellow employee. Although Schulz received no written reprimands about his attitude and relationship to fellow employees, Supervisor Good orally communicated to Schulz dissatisfaction about his attitude when discussing the reasons for denial of raises to Schulz in August and October 1978. What Good told Schulz in August 1978 is revealed by the following credited excerpts from Good's testimony:

Q. When did you tell him, and what did you tell him?

A. Well, on or about that time when the evaluation came up, I told Pete his work hadn't been good, his production has been bad, his attitude has been terrible, he has been bothering the men in the plant; and, if he doesn't straighten out his act, we may replace him.

What Good told Schulz in October 1978 concerning the denial of a raise is revealed by the following credited excerpts from Good's testimony:

Q. What, if anything, did you tell him?

A. I told him he didn't get an increase because of his production. It had been bad. His attitude was bad, and he'd better shape up so that he can get these increases.

Around this same time or later (late 1978 or early 1979), Good reprimanded Schulz for statements Schulz made about Norman Birney, assistant to President Porter, as is revealed by the following credited excerpts from Good's testimony:¹⁴

Q. Can you tell us what occurred and where this took place?

A. Yes.

I was standing back by machine number 1 Ebco in the corner of the press room, and Pete Schulz came over and he wanted to talk to me about something.

I don't recollect or remember exactly what he really wanted to say to me, because in the beginning of his conversation he made a statement something to the sort of Norman Birney was a m—rf—r and a liar.

¹⁴ Edited but not changed in meaning.

I in turn reprimanded Pete and told him that was ground for dismissal, and I don't want him speaking like that about anybody in the plant.

And I asked him why he said that about Norman Birney.

He told me he had fired his brother.

I knew nothing about—or anything about this.

I told Pete to go back to his press and don't talk to me about that or anything else like that about any employee. It was grossly embarrassing to me that he would speak to me like that; it was disrespectful to me as a foreman.

Later, around March or April 1979, Schulz spoke to Norman Birney about his failure to receive a raise. Schulz told Birney in effect that Polizzano and Good had denied him a salary increase, that he thought he was entitled to an increase. Schulz wanted to know if Birney could help him get his wage increase. What occurred is revealed by the following credited excerpts from Birney's testimony:

Q. What, if anything, did he say to you, and what, if anything, did you say to him?

A. He said to me that Joe Polizzano and Harry Good denied him a salary increase, and he thought he was entitled to one.

He asked me to see if I could do anything for him. So I said, Pete, I don't know if I can do anything for you, but I'll try. But there's a few things that you have to do to help yourself.

I says, number one, you've got to learn how to get along with the rest of the men.

I said, number two, you've got to do what Harry tells you to do. You've got to stop arguing with him.

I said, number three, you've got to clean up your filthy mouth.

I also said to him, Pete, there's one thing you've got to remember, whether you work here or any place else. You get a lot with a little honey, and you get nothing with vinegar.

And I said, if you can change your ways, I'll speak to Joe and Harry.

Q. What, if anything, did he say to that?

A. He said he would try, very, very hard.

Q. Did you speak to Harry or Joe?

A. I spoke to Harry and Joe, and I told them just how I felt. I said, why don't we give the man one more chance.

Harry said, I don't want to give him another chance. I want to fire him.

So I said, wait a minute, Harry. I just finished negotiating the purchase of another piece of equipment. Let's give him another chance. Let's give him another chance.

He still didn't want to give him another chance, but I talked him into giving him another chance, and Joe gave him a \$15 increase, and Joe informed him of that.

Later, union discussion and activities commenced among Respondent's employees. Schulz attended the or-

ganizational meeting held by the Union on May 7, 1979. Thereafter, the Union, by letter dated May 9, 1979, notified Respondent that Schulz was one of five employees listed on a "partial list" of the Union's inner working committee at Respondent's plant. Respondent received said letter on Friday, May 11, 1979. As indicated, Respondent, by Porter and Birney, on May 7, 1979, made speeches to its employees revealing an awareness of employee union activity and Respondent's opposition to unionization.

On Monday, May 14, 1979, Schulz, as part of his work for the day, printed part of a job designated for Western Electric. The job number for such job was 17663. Either before or after or in between times, Sudnik also did some printing on said job.

On Wednesday, May 16, 1979, around noon, Schulz called Foreman Good over to his press. Schulz told Good in effect that the ink rollers were not any good, that he could not hold an ink and water balance on the press. Good asked Schulz if he had touched or set the ink rollers. Schulz told Good that he had not touched or set the ink rollers. Good told Schulz that his problem was poor pressmanship, that the pressman at night did not have Schulz' problem with the press.

Good noticed that the ink was emulsified at one end of the press and asked Schulz how the printing was coming out at the other end of the press. Schulz told Good that the printing was good. Good had Schulz remove the printing from the press and examined the same. Good discovered that there were 2,500 sheets which had bad printing. Good asked Schulz whether he had been watching the job and pulling sheets for inspection and inquired as to how 2,500 sheets could have been run without the problem of bad printing being ascertained. In this regard, the evidence reveals that a printer is expected to pull a sheet in every 200 or 300 sheets for inspection purposes. Schulz stated in effect that he was doing the work of two men and that this was why he had not caught the error of the printing, that problem was caused by the rollers and that he had called his foreman. Good told Schulz that the problem was not a mechanical problem but was because Schulz was a poor pressman.

Good told Schulz to wash the rollers and start again with fresh ink. Schulz washed the rollers, inked the press, and commenced printing again. The foregoing occurred around noon. Whether Schulz commenced printing before or after noon is not clear. In any event, it is clear that Schulz again commenced printing without having any problems with the printing.

Supervisor Good reported Schulz' printing problem to Production Manager Polizzano. Polizzano thereafter reported the problem to Birney, executive assistant to President Porter. At some point of time between 3 and 4 p.m. Birney, Good, and Polizzano went to Schulz's work station to talk about the printing problem.¹⁵

¹⁵ The facts are based upon a composite of the credited aspects of the testimony of Birney, Good, Polizzano, and Schulz. The testimony of any witness inconsistent with the facts found is discredited. I am persuaded that Birney's testimony as to who suggested going to the conference room is more reliable. However, whether Birney or Schulz made such suggestion is not of great importance.

Birney showed Schulz some of the sheets that Schulz had improperly printed and asked, "What the hell is that?" Schulz told Birney that the problem was not his fault, that the ink rollers were out of adjustment, that the "Miller was no f—g good, that it was nothing but a piece of s—t." Birney told Schulz to calm down, and suggested that they go into the conference room to talk over the matter. Birney suggested to Schulz that he wash up and follow him, Good, and Polizzano into the conference room.

Birney, Good, and Polizzano went to the conference room. Shortly thereafter, Schulz joined the supervisors in the conference room. Polizzano asked Schulz to explain how he could do such bad work and so much of it. Polizzano told Schulz that he had ruined 2,500 sheets. Schulz replied that there was something wrong with the ink rollers, that they were out of whack, that they were egg shaped or something. Good remarked that the problem was nothing but poor pressmanship. Good asked Schulz if he had adjusted the rollers. Schulz stated that he had not adjusted the rollers. Schulz stated that the reason he had not caught the printing error was that he was at the other end of the press while he was loading and was not watching the sheets coming out. Birney told Schulz that earlier he had spoken to him as a Dutch uncle and had obtained a wage increase for him when Good was opposed to his getting a wage increase. Birney told Schulz that Schulz had let him down. Birney told Schulz that if Respondent ever got another job like this one out of him that he would be through with the Company.

Schulz returned to his work station, worked until 4:30 p.m., and then went home.

It should be noted that the printing being done by Schulz involved usage of one side of the press only. Later that afternoon, Respondent commenced usage of both sides of the press. What occurred is revealed by the following credited excerpts from Good's testimony:¹⁶

Q. What problems, if any, did they have on the Miller?

A. When the night shift came to work on the 16th at 4:30, the 16th of May, the night shift had a schedule running one-siders, to print one side only.

When we print one side only, we print on the second printing unit only.

They ran one-side printing until about 7:30 in the evening, and at 7:30 on the schedule was a two-sided job for Joe Sudnik to print.

He inked up the second unit first and second unit, and he had a problem with the first unit immediately. He couldn't print properly on the first unit.

He called me over. He told me his problem.

I asked Joe, Joe, did you adjust any rollers or touch any major adjustments on the press?

Joe said, "No." He says, "I can't get started with this first unit."

So, at that point I checked the ink rollers to see how the settings were, and I found the settings completely out of whack.

I had to conclude to myself that Pete Schulz adjusted the rollers.

* * * * *

I concluded, since he was the only man running the press on the day shift and had ruined 2500 sheets, lied to me about setting ink rollers; and then the night crew had the same problem, but they didn't print 2700 bad sheets.

I found the ink rollers all out of adjustment, and I assumed Pete Schulz adjusted them.

Q. What did you do?

A. It was late, and I was tired. I put in a 14-hour day. I was opposed to resetting the ink rollers at that hour.

I told Joe Sudnik to overpack the plate.

The plate has a packing sheet under it to raise the sheet. I raised it to 4000 so that the ink rollers would touch the plate.

I waited while Joe successfully printed his job. He was printing all right, so I went home at that time.

On May 17, 1979, around 5 p.m., Baravo, a cutter, discovered an error in the printing of the job previously described as job no. 17663. If printed correctly, when cut, the respective backs of pages are printed in correct sequence and are in the same up and down order as the front of such pages. The error that was noticed was that backed pages were upside down and out of sequence. The error was ultimately determined to involve some 430 pages. Respondent's records and job orders indicated that Sudnik and Schulz had worked on job no. 17663.¹⁷

Around 8 a.m., starting time for work, on May 18, 1979, Supervisor Good called Schulz from his work station and told him to go to the conference room, that he, Polizzano, and Birney wanted to speak to him. Schulz went to the conference room and met with Supervisors Good, Birney, and Polizzano. Polizzano told Schulz about the improper printing on job no. 17663, that Schulz had done it, and asked Schulz to explain how it

¹⁷ The evidence is persuasive that Respondent had a sincere belief that Schulz performed the work involved in such error. I am persuaded, however, that Schulz was not the one who put the "plate" involved on the press in an upside down condition. For all this record reveals, Sudnik may have placed the plate on the press incorrectly before getting off work and may even have ran 430 pages incorrectly. Polizzano's testimony was to the effect that the error involved work on form no. 3, that the records indicated that Schulz performed work on form no. 3. However, Polizzano's testimony revealed that the work on job no. 17663 was done on two shifts and that Sudnik did work on form no. 3. It is hard to decipher from the exhibits exactly what forms Sudnik worked on. The evidence as a whole is not sufficient to establish that Schulz was the only pressman to work on form no. 3 of job no. 17663. Schulz' remarks to Respondent's supervisors about a desire to see the "plate" and Schulz' testimony, which I believe, that he does not remember putting a "plate" on the press in a "backward" condition, persuades that Schulz was not the one who put such plate on the press in a "backward" condition. I would note, however, the facts do not warrant a finding or belief that Respondent knowingly caused such error itself as a means of getting rid of Schulz.

¹⁶ An obvious inadvertent typographical error in the transcript on p. 1202 at l. 12 is corrected by substituting the word "lied" for "liked" in the record.

happened. Schulz stated that he did not know how he mishandled the job, that he was human, and that all human beings made errors. Schulz asked how did the Company know that he had printed the job. Good then showed Schulz timesheets and an order form indicating that he had worked on job 17663. Good told Schulz in effect that the error involved 500 sheets and was caused by Schulz putting a plate on upside down. Schulz told Good that he did not remember doing the bad work, that putting a plate on upside down and running 500 sheets and taking the plate off and remounting the same correctly would be unusual, and that, if he did so, he would have remembered it. Good in effect disputed Schulz' remarks by asking how could he not remember if the plate had been put on upside down and had been placed on the press twice. Schulz suggested that Sudnik or someone else on the third shift could have done the improper work, that somebody could be trying to blame him for bad work. At some point Schulz asked to see the "plate" with no response.

What occurred then is revealed by the following excerpts from Good's testimony:

Through further inspection on the job, he had run another form also.

We found the quantity that he had ran was way over, equalizing the bad work he did.

Q. Was there anything further said?

A. Yes.

Norman Birney asked him, if he did the bad work, why did he leave it in the job or how did it get in the job?

Pete just didn't give us any straight answers.

* * * * *

Norman Birney had told Pete that, did he realize the seriousness of these errors; if all of these bad pages were collated into the books and sent out into the field, did he realize the seriousness of this error, that it could cost us one of our best customers and maybe 50 percent of our work?

Then Pete replied, well, he said that's not his problem. Pete said that wasn't his problem at all.

I believe at that point Joe Polizzano suggested we're not getting anywhere, and until further investigation into this, we'd suspend—or Joe Polizzano suspended Pete with pay for that day and told him to report Monday morning.

On the morning of May 21, 1979, Supervisor Good saw Schulz when he entered the plant and told him to come into the conference room, that Norman Birney, Joe Polizzano, and Good wanted to talk to him. Good and Schulz then went into the conference room and met with Birney and Polizzano. In essence, the respective individuals repeated in substance their remarks of May 18, 1979. Thus, Polizzano again asked Schulz how he could make such an error (the printing of May 14, 1979) and leave it in the job. Schulz again stated that he did not remember committing the error and suggested in effect that Sudnik or someone else was trying to do him in. Polizzano told Schulz that he would have to learn how to get along

with people. Schulz stated that the only one he could not get along with was Good, that this had been for the past few months and was because of his discussion about his pay raise, that such had created bad feelings. Birney again told Schulz that he had gone to bat for him and that Schulz had let him down. Birney told Schulz that he had obtained a \$15 wage increase for him, that he felt Schulz had given him a direct slap in the face by trying to sabotage the job (job no. 17663) and ruin Howard Press. Schulz told Birney that he was nothing but a mouthpiece and that he wanted to see Herb Porter.

Birney went out of the office and found Porter in his office.¹⁸ Birney explained what had been happening and suggested that Porter join the conversation. Porter entered the conference room and asked Schulz in effect what was the problem. Schulz told Porter in effect that he did not know how he had screwed up the job (job no. 17663), but someone else might have run it and tried to sabotage him. Schulz stated that he could not work with Good, that Good was the cause of all his problems. Porter then stated that there was no need to continue the discussion if this was the case. Specific words to the effect that Schulz was being dismissed were not used at this point. It is clear, however, that Schulz, Porter, and the others understood that Schulz was being terminated. Schulz stated that he had guts, there were a couple of things he wanted to say.

Schulz told Porter that the new press was no good, the rollers were no good, that he could not run it without making major adjustments every time he picked up the press, that he did not know how the job had been messed up. Porter asked Schulz how others could run the press without problems. Schulz told Porter that he could not get along with Sudnik. Schulz stated in effect that he did not know, he could not, he had to make adjustments every time he picked up the press. Schulz knew that he had made the mistake about the running of the badly printed sheets, that Good had discovered this error and that he had not pointed out the printing error to Good. Schulz told Porter in effect that he was being fired because he was for the Union. Porter told Schulz that this was not the reason, that Respondent could have discharged Schulz in the past for a number of infractions, that the reason was because Schulz could not work for his foreman.

In addition to the foregoing, the parties introduced exhibits and examined witnesses concerning whether or not Respondent had discharged employees for production errors in the past. It is sufficient to say that I have considered all such evidence. The evidence as a whole reveals that Respondent has discharged employees for conduct of a type relating to production problems. As a whole the evidence tilts slightly to reveal that Respondent's discharge of Schulz is consistent with its past practices and did not reveal disparate treatment.

The General Counsel at the hearing made statements related to having subpoenaed certain records concerning production and spoiled work and that Respondent had not furnished him all of such records. Respondent's

¹⁸ Porter had apparently just entered his office.

counsel made statements to the effect that many of such records had been destroyed, that a summary of spoiled work was kept and had been furnished the General Counsel, and that there were some spoiled work orders in individual employees' files. Much argument and dialog of a related nature were engaged in by counsel at the hearing. It appeared that records of spoiled work specifically requested as to individuals were available for the General Counsel. The General Counsel contends that adverse inferences should be drawn against Respondent for failure to produce records. Such inferences might be in order if it were established that there were specific records and that such records had been withheld. In this case, it is only speculative as to what records were available and that such records have been withheld. I find it improper to draw such inferences.

Contentions and Conclusions

The General Counsel contends and Respondent denies that on or about May 19, 1979, Respondent discharged Peter Schulz in violation of Section 8(a)(3) and (1) of the Act. The facts are clear that Respondent suspended Schulz on May 18, but with pay for such date, and discharged Schulz on May 21, 1979, without Schulz engaging in any work on May 21, 1979.

Considering all of the facts, I am persuaded that the facts preponderate for a finding that Respondent discharged Schulz because of nondiscriminatory considerations. The facts reveal that Schulz had engaged in union activity and that Respondent was aware of his designation as a member of the Union's organizational committee. The facts further reveal that Respondent had animus toward the unionization of its employees as revealed by Porter's and Birney's speeches on May 7, 1979, and as revealed by the later discriminatory discharges of Doklia, Blechar, and Moss. Schulz, however, clearly had a production error in the printing of a job on May 16, 1979, and Respondent had a reasonable basis for belief that Schulz had made an error in mounting a plate for printing on May 14, 1979, and had left incorrectly printed material in stock that had been printed which could have resulted in a costly error. Schulz' statements concerning his troubles with Good reveal that Schulz' ultimate troubles were triggered by events preceding the question of unionization. Considering all of the facts, I am persuaded that Porter decided to discharge Schulz because he believed that Schulz could not get along with Supervisor Good and because he believed that Schulz had made the referred-to errors in printing, mounting of plate, and leaving improper work product to mingle with and perhaps become a part of the finished product. In sum, I conclude and find that Respondent did not violate Section 8(a)(3) and (1) of the Act by the discharge of Schulz on May 21, 1979.

F. Termination of Doklia, Blechar, and Moss on July 2, 1979

1. (a) Michael Doklia was initially employed in September 1976, and worked in various positions such as pressman and offset platemaker thereafter without signifi-

cant incidents until the immediate events surrounding his discharge on July 2, 1979.

(b) Judy Blechar was initially employed in September 1976, and worked in the bindery for 9 months and then in the prep room as a stripper or on camera or related work. There were no significant incidents about her employment until the immediate events surrounding her discharge on July 2, 1979.

(c) Leann Moss was initially employed in September 1978, and worked on open and opaque negatives, and made plates without significant incidents until the immediate events surrounding her discharge on July 2, 1979.

2. As has been indicated, there are no issues, concerning the discharges of Doklia, Blechar, and Moss on July 2, 1979, regarding quality of or complaint about their work or work history. The issues are narrowed to whether Respondent discharged Doklia, Blechar, and Moss because of their union activity or beliefs and on the pretext that the discharges were because such employees had used marijuana on company premises or whether the discharges were nondiscriminatorily motivated and merely because such employees had used marijuana on company premises.

3. Doklia and Blechar were active in union organizational efforts in 1978. Respondent was aware of Doklia's and Blechar's union efforts in 1978. Porter and Birney, in speeches on May 7, 1979, alluded to Doklia's and Blechar's 1978 union activities. In such speeches, Respondent presented a message indicating that unions sought out past supporters to carry on new campaigns. Doklia and Blechar were active in 1979 in the union campaign. Thus, Doklia initially contacted the Union in early May 1979, distributed several union cards and solicited employees to sign the same, attended a May 7, 1979, union meeting, and executed a union authorization card on such date. Blechar, around May 7, 1979, distributed several union cards and solicited employees to sign the same, attended a May 7, 1979, union meeting, and executed a union authorization card on such date. Moss attended a union meeting on May 7, 1979, and executed a union authorization card on such date. Further, the Union, by letter dated May 9, 1979, received by Respondent on May 11, 1979, notified Respondent that Doklia, Blechar, Moss, Schulz, and Veltre were part of an in-plant organizing committee.

4. In issue in this case is whether Respondent had a rule prohibiting employee usage of alcohol or drugs while at work or on company premises. It appears to be undisputed that the possession or usage of drugs, such as marijuana, is prohibited by law, whether Federal or the State of New Jersey. No evidence was presented to reveal that Respondent has written rules or that Respondent has in writing notified employees that it has a written rule prohibiting the usage of alcohol or drugs on company premises, or while at work, or prohibiting the working of employees while under the influence of alcohol or drugs.

The testimony of witnesses reveals that some employees were told when initially employed that there was a rule prohibiting the usage of alcohol or drugs at work. The testimony of other witnesses reveals that some em-

ployees were not told when initially employed that there was a rule prohibiting the usage of alcohol or drugs. I am persuaded that all such witnesses were testifying truthfully. Thus, I am persuaded that Respondent did have rules prohibiting the usage of alcohol or drugs at work.

Much litigation in this case concerned Respondent's records and whether such records concerning employees revealed that employees had been discharged for usage of alcohol or drugs at work. Some of the testimony and records indicated that Respondent used a code whereby letters were placed on the outside of personnel files of terminated employees to designate whether said employee had a problem relating to drinking or drugs. Some of the testimony of Respondent's witnesses was to the effect that Respondent discharged some employees because of its rule prohibiting usage of alcohol or drugs on the premises or while at work. As to several employees who had been terminated and who apparently had a problem with the usage of marijuana, the files did not reveal such code markings. Porter explained that he ceased using such markings when an NLRB agent had laughed at such usage.

The testimony of Respondent's witnesses relating to the reason for the usage of a code system relating to the designation of alcohol, drug, or marijuana problems and the records reveal some inconsistencies. Thus, although various file covers reveal the referred-to coding, some of the file memoranda clearly referred to the usage of marijuana and alcohol.

The sum of the evidence reveals that there have been discharges of employees when the usage of alcohol or marijuana or other drugs had an obvious effect on the physical ability of employees to perform work. On the other hand, the evidence in this case reveals that Respondent did not discharge employees on the mere belief of usage of alcohol or drugs or when the facts did not reveal an obvious impairment of the employees' faculties.

In connection with the foregoing findings and conclusions I note the evidence presented with respect to the issue of whether Respondent had permitted employees Rodriguez and Rivera to continue to work after Respondent was aware that such employees had smoked marijuana on the premises and that such employees showed the "effect" of having smoked marijuana. Testimony was presented by the General Counsel through witnesses Rodriguez and Rivera to the effect that, in January or February, they smoked marijuana in a backroom at Respondent's plant during a lunch break, that Supervisor Williams saw them when they left the room, questioned them and then checked the room, questioned them again and that they admitted to the supervisor at that point they had been smoking marijuana, that the next day they were called into Supervisor Eitel's office and talked to by Birney, assistant to President Porter. Further, Birney warned them that they would be discharged if they were caught smoking marijuana at work again.¹⁹

¹⁹ This is a summary of testimony. More details will be set out later herein as regards specific facts found.

The General Counsel then proceeded to present a documentary exhibit through Birney concerning a memorandum in Respondent's files about Rodriguez' and Rivera's smoking marijuana during a break period around March 22, 1979. Despite the fact that such memorandum was presented by the General Counsel between the times of presentation of witnesses Rodriguez and Rivera, no attempt was made to clarify the timing of events as related to Rodriguez' and Rivera's testimony.

It would appear from all of the facts and testimony of the witnesses that the parties basically were testifying about the same events. Despite this, Respondent's counsel, largely by leading type questions, elicited a denial by Supervisor Williams that the events as testified to by Rodriguez and Rivera occurred in January or February 1979. Williams was not questioned as to whether such events occurred around March 22, 1979. Rather, Williams, by leading questions, was questioned as to whether on March 21, 1979, he noted that Rodriguez and Rivera were not at work after breaktime. From this Williams then proceeded to testify about seeing Rodriguez and Rivera in Rodriguez' car, calling the two to come into the plant, observing their "blood shot" eyes, saying nothing to them, and the next day reporting to higher-ups what he had observed and believed.

I would also note that the memorandum of March 22, 1979, relating to Rodriguez' and Rivera's smoking marijuana, had been changed from what originally had been set down. Neither party attempted to examine witnesses or to explain such changes. This memorandum as originally written was corroborative of Rodriguez' and Rivera's testimony. One of the changes made on the document appears to obviously have been made at a later date. It is noted that the memorandum referred in effect to events occurring on March 21, 1979, and originally set forth that Rodriguez and Rivera "admitted to smoking pot." The change added "but not today." It would appear that the referenced change, if proper, would have referred to the events of March 21, 1979.

Neither Rodriguez nor Rivera has an interest in this proceeding. I am persuaded that they did smoke marijuana in a backroom, were discovered by Williams leaving the room, were questioned by Williams, ultimately admitted to Williams that they had been smoking marijuana in the backroom, and that Williams said nothing to them at the time. I am persuaded that the incident occurred on March 21, 1979. I am further persuaded that Williams, apparently a kind and tolerant person, originally intended doing nothing about the incident, but in talking made remarks which caused him to reconsider whether he could just forget about the incident. I am persuaded that Williams fabricated the idea that Rodriguez and Rivera stayed beyond their breaktime in Rodriguez' car and related such story to keep hidden the fact that he had failed to take immediate action. I am persuaded that Williams did report to Eitel that he had noticed that Rodriguez and Rivera were not back from their break, had looked for them, had seen them in Rodriguez' car, had called them to come in to work, had observed that they had "blood shot" eyes, and believed that they had been drinking or smoking pot in Rodriguez' car.

Thereafter, Rodriguez and Rivera were called into Eitel's office and talked to by Birney. What occurred at such time is revealed by the following credited excerpts from Birney's testimony.

Q. And did you—and did Mr. Oscar Rivera and Jesse Rodriguez come?

A. Gordon brought them into the office. We closed the door, and I confronted both of them. I said, fellows, I—

Q. What time was this?

A. It was somewhere just around 4 o'clock.

Q. Go ahead.

A. And I said, fellows, I have reason to believe that you fellows were smoking pot in Jesse's car, the night before, on their lunch break, between 8 and 8:15.

I said to them, were you smoking pot? They both said no. I said, I think you're lying, and I looked at them, and they didn't answer me.

I said, tell me the truth. Were you smoking pot? And then Jesse said, yes. And then Oscar said yes, and then they both said they weren't smoking pot on the premises of Howard Press. They were smoking pot in school.

So I said, I think you're lying. You were smoking outside in the car, weren't you? They denied it. They said they were smoking in school.

I said, well, where did you get the pot? Then Jesse answered, in school.

I said, I still think you're lying. I think you were smoking pot in the car on your break.

And I warned them that if they ever did it again, or if they were ever suspected of smoking pot on their break, that they would be fired immediately, and I would call their parents, and advise them as to why they were being fired.

Apparently shortly after the above event, Birney prepared a memorandum as follows but made changes at some later time as indicated below.

HOWARD PRESS, INC.

Corrective Action Report

Employee	Date 3/22/79
Oscar Rivera	
Jessie Rodriguez	
Supervisor Gordon	Dep't Small Presses

PROBLEM ACTION

Jessie & Oscar Rivera
caught²⁰ smoking pot on their
lunch break.
I confronted both in my office
along with Gordon Eitel. They
both admitted smoking pot.²¹ I

²⁰ The change was to the effect that the word "caught" was stricken through and, to the immediate left, the word "suspected" was written in.

²¹ The change was to the effect that a line was drawn commencing after the word "pot" and running downward and to the right of the word "be" several lines below and adding in writing the words "but not today."

warned them if they ever did it again they would both be fired & we would advise their parents as to why they were discharged.

Considering the above, it is clear that, at the time Birney spoke to Rodriguez and Rivera, Birney considered that Williams had caught Rodriguez and Rivera smoking marijuana on company premises during their lunch break and that the two had admitted the same to such an extent that there was no real question as to what they had done. It is clear that Birney did not believe Rodriguez' and Rivera's later denial. Birney's memorandum, even as changed, indicates that the two had admitted the charges of having smoked marijuana on their lunch break but *denied that they were smoking pot* on the date of confrontation. In sum, the facts reveal that Respondent knew that Rodriguez and Rivera had smoked marijuana on their lunch break and, despite this, merely reprimanded the two.

5. President Porter believed that employees were engaged in efforts to organize a union as of the last of April 1979. As a result of this belief, Porter spent approximately 2 weeks in preparing a speech which he delivered to employees on May 7, 1979. As indicated in such speech, Porter alluded to Doklia's and Blechar's past union activities and indicated in effect that it could be expected that they would again be engaged in union activities.

The evidence reveals that at least some of Respondent's employees smoked marijuana and that some writing appeared on bathroom walls indicating remarks about drug usage in early 1979. Despite this, Respondent made no speeches and posted no notices referring to its rules or policy concerning alcohol and drug usage. Instead, after developing a belief that union activity was going on and being of the mind that Doklia and Blechar would be engaged in union activity, Porter contacted police officials of Linden, New Jersey, about a "drug" problem. In this regard, it should be noted that the number of employees who work at the Pennsylvania street plant is small, around 20 employees. Considering this, Porter's testimony of how he developed his belief that union activity was ongoing, and all of the facts, I find it proper to infer that Respondent also had a belief that Doklia, Blechar, and others were smoking marijuana in Doklia's van during breaktime, when Respondent contacted the Linden police concerning a drug problem.

The Linden police requested the names and addresses of Respondent's employees. After receiving the same and apparently after running a record check, the Linden police advised President Porter that Doklia had had some past involvement with usage of marijuana.

6. During the month of May 1979, including the time around May 24 and 25, 1979, Doklia, Blechar, Moss, DeLuca, and others would meet in Doklia's van around lunch or breaktime and talk about the Union. Apparently on most of such occasions, Doklia, Blechar, Moss, and DeLuca would smoke marijuana.

The Union filed a representation petition in Case 22-RC-7881 involving the employees at Respondent's Penn-

sylvania Railroad Avenue plant on May 14, 1979. On May 30, 1979, the first day of such representation hearing was held. Such hearing was also held on June 4, 5, and 6. Employees Doklia and Blechar attended such hearing for many of the days. Doklia also was presented as a witness in such hearing on June 5, 1979. The evidence was presented in such a way that one can only speculate whether Doklia and Blechar were present at such hearing on May 30, 1979.

In the meantime, it appears that the Linden police had Doklia's van under surveillance. In any event, on June 1, 1979, Linden police arrested Doklia, Blechar, Moss, DeLuca, and employees Warvel and Perlach. At such time the police indicated to some or all of the foregoing that the police had photographed the employees in the act of smoking marijuana on or about May 24 and 25, 1979.

After the various named employees were arrested and were released on bond, some of the employees returned to Respondent's premises and spoke to some of Respondent's supervisors. Perlach was the first employee who returned and spoke to Respondent's supervisors. Perlach was allowed to return to work but apparently was upset and left work shortly after he had returned to work. At the time that Perlach returned to work, President Porter was at his lawyer's office. Later, Warvel returned to the premises, spoke to Respondent's supervisors, and then left.

Later, Moss and DeLuca returned to Respondent's premises and spoke to Respondent's supervisors. Respondent's supervisors told Moss and DeLuca to call back in a day or two as Respondent would conduct its own investigation.

In composite effect, Warvel, Perlach, Moss, and DeLuca told Respondent's supervisors that Doklia, Blechar, Moss, DeLuca, and others had met in Doklia's van on a number of occasions in May 1979, during lunch or breaktime, had discussed the Union, that Doklia, Blechar, Moss, and DeLuca on a number of such occasions had smoked "pot," that Warvel and Perlach were not smoking pot on such occasions. Warvel and Perlach indicated to Respondent's supervisors that the police had indicated that they were not in real trouble. In the discussions, Respondent's supervisors questioned the employees whether they knew that it was the Company's policy to fire employees who were under the influence or had possession of drugs on company premises. Most, if not all of the employees, indicated an awareness of such policy.

On June 2, 1979, Respondent sent identical telegrams to Doklia, Blechar, Warvel, Perlach, Moss, and DeLuca. Such telegram was as follows: "Effective at once, you are suspended without pay. Howard Press, Inc., Joseph Polizzano (104 Pennsylvania Railroad Ave., Linden, NJ 07036.)"

On Monday, June 4, 1979, Moss telephoned Respondent and spoke to Birney about the length of her suspension. Birney told Moss that Respondent had not made a decision at that time.

On or about June 6, 1979, Respondent reinstated Warvel and Perlach with backpay. Perlach at such time

indicated that the police charges against them had been dismissed. Both Perlach and Warvel signed statements, prepared by Respondent's counsel. Such statements were to the effect that they had not been smoking "pot" on company premises.

At the time, Porter decided to continue to leave Doklia, Blechar, and Moss on suspended status²² despite an inclination to discharge such employees as is revealed by the following credited excerpts from Porter's testimony.

Q. Will you explain to the Court, please?

A. I was inclined to discharge Blechar and Doklia and Moss around the same time we reinstated Perlach and Warvel, based on the information that I had.

Because these people were involved in a union organizing drive. After speaking with you, you counseled that I simply leave them on suspension temporarily, because a trial might be coming up that would find them guilty or whatever.

And I accepted your advice to leave them on suspension.

There is no evidence, excepting (1) the above referred to conversations between Warvel and Perlach and management and the signed statements by Perlach and Warvel, and (2) receipt of a part of a police report concerning the June 1, 1979, arrests, that Respondent conducted any effective investigation into the matter of the employees smoking marijuana on company premises during working hours. However, I credit Birney's testimony to the effect that he telephoned the homes of Doklia and Blechar and attempted to leave messages with Doklia and Blechar to call him and that he did not receive return calls. I credit Doklia's and Blechar's testimony to the effect that they did not receive messages as to such telephone calls. I discredit the denials by the mothers of Doklia and Blechar to the effect that they did not receive the telephone calls from Birney.

The above referred to partial police report was received by Respondent's officials from Respondent's attorney. Such partial report was essentially limited to details of service of arrest warrants and search warrants on June 1, 1979, and had little value relating to what had occurred prior thereto. Perhaps the report had been given Respondent's attorney in its abbreviated form. Perhaps Respondent's attorney, for reasons not disclosed, only submitted to Respondent the report in abbreviated form. Regardless of this, it would appear that the General Counsel could have obtained a full and complete report from the original source. Accordingly, I would find it unwarranted to draw adverse inferences as to the portions of the report not presented into the record.

On June 8, 1979, Doklia and Blechar sent identical letters to Respondent. The letter from Doklia was as follows:

²² DeLuca had resigned several days after June 2, 1979.

June 8, 1979
 Mr. Porter, Jr.
 President
 Howard Press
 104 Penna R.R. Avenue
 Linden, New Jersey 07036

Dear Mr. Porter:

Kindly inform me of the reason for my suspension. Also, kindly inform me of when my suspension will end and I will be allowed to return to work.

Sincerely,
 /s/ Michael P. Doklia

On July 2, 1979, Respondent terminated the employment of Doklia, Blechar, and Moss by transmission of identical letters to them.²³ Such letter as transmitted to Doklia was as follows:

July 2, 1979
 Michael P. Doklia
 49 Raritan Road
 Linden, New Jersey 07036

As a result of being arrested by the Police Department of Linden, N.J. for use of drugs, and this occurred on company property, you were suspended on June 2, 1979.

From the information we have received in regard to the above, we have no alternative but to terminate your employment.

HOWARD PRESS, INC.
 /s/ Herbert R. Porter, Jr.
 President

Contentions and Conclusions

The General Counsel contends that Respondent discharged Doklia and Blechar on July 2, 1979, because each had engaged in union activity and because each appeared at the representation hearing, held on May 30 and June 4, 5, and 6, 1979. Respondent contends that such employees were discharged for cause, for violation of company rules or policy prohibiting the usage of alcohol or drugs on company premises or during working hours.

The General Counsel contends that Respondent discharged Moss on July 2, 1979, because she had engaged in union activity. Respondent contends that it discharged Moss for cause, for violating company policy or rules prohibiting the usage of alcohol or drugs on company premises or during working hours.

The facts clearly reveal that Respondent had knowledge of Doklia's, Blechar's, and Moss' union activity at the time of the June 2, 1979, suspensions. Thus, Porter's and Birney's speeches on May 7, 1979, revealed Respondent's awareness of Doklia's and Blechar's 1978 union activity. Further, Respondent was aware as of May 11, 1979, that Doklia, Blechar, and Moss were supporting the Union and were on an in-plant organizing

committee. Respondent's animus toward the Union is clearly revealed by Porter's and Birney's May 7, 1979, speeches. Respondent's past practice relating to treatment of employees as regards "drugs" reveals that Respondent treated Doklia, Blechar, and Moss in a disparate manner on June 2, 1979, and July 2, 1979. Considering this and Respondent's animus toward the Union, the facts establish that Respondent discharged Doklia, Blechar, and Moss because of their having engaged in union activity. Respondent's past practice revealed that employees were only discharged for drug usage when the same affected their faculties or work performance or when there were reasons to discharge such employees for poor work performed otherwise. In the instant case there is no evidence that Respondent had noted that Doklia, Blechar, Moss, or DeLuca were under the influence of drugs or that their work was affected at any time while such employees were at work.

The findings in this case are not to be read as a condonation of drug usage or the smoking of marijuana contrary to law. Rather, the issue is simply whether Respondent was discriminatorily motivated in the discharges of Doklia, Blechar, and Moss.²⁴ Considering all of the facts, the facts preponderate for a finding that Respondent discriminatorily discharged Doklia, Blechar, and Moss on July 2, 1979, because of their union activity. Such conduct is violative of Section 8(a)(3) and (1) of the Act.

As noted, the General Counsel contends and Respondent denies that it was motivated in the discharge of Doklia and Blechar because they gave testimony or participated in a representation proceeding, and that by such conduct Respondent violated Section 8(a)(4) and (1) of the Act.

The evidence is insufficient to reveal that Doklia and Blechar were in fact present at the representation hearing on May 30, 1979. The events of June 1, 1979, and the suspensions of Doklia and Blechar and others on June 2, 1979, preceded the dates wherein it is established that Doklia and Blechar attended such representation hearing. In sum, the evidence is insufficient to reveal that Doklia's and Blechar's attendance at the representation hearing had any bearing upon the decision to discharge Doklia and Blechar. Accordingly, the allegations of unlawful conduct in such regard will be dismissed.

G. Objections to the Election

The petition in Case 22-RC-7881 was filed on May 14, 1979. The election held in such case was held on November 2, 1979. The ballots in such election were impounded pending determination of the Employer's request for review. Thereafter, pursuant to telegraphic direction from the Board, the impounded ballots were opened and counted with the results being 21 valid ballots with 6 being for the Petitioner and 15 against the Petitioner.

On December 10, 1979, the Petitioner filed timely objections to conduct affecting the results of the election. Such objections included Objections 3, 4, and 5, and re-

²³ DeLuca pled guilty to the charges relating to the smoking of pot and resigned from Howard Press, Inc., 1 or 2 days after June 2, 1979.

²⁴ *Starbrite Furniture Corp.*, 226 NLRB 507 (1976).

lated to the discharges of Schulz, Doklia, Blechar, and Moss. On January 11, 1980, the Regional Director for Region 22 ordered that the unfair labor practice case involved herein and the representation case (Case 22-RC-7881) be consolidated for purposes of hearing, ruling, and decision.²⁵

1. Objection 3

Thus, the Petitioner averred that the Employer engaged in conduct affecting the results of the election—by:

3. On or about May 19, 1979, the Employer discharged Peter Schulz because he joined or assisted the Union.

The facts set forth previously herein reveal that Respondent discharged Schulz for cause on May 21, 1979. Accordingly, it is recommended that Objection 3 be overruled.

2. Objection 4

The Petitioner averred that the Employer engaged in conduct affecting the results of the election—by:

4. On or about July 2, 1979, the Employer discharged Michael Doklia and Judith Blechar because they joined or assisted the Union and because they participated and gave testimony in a representation hearing conducted under the Act.

The facts set forth previously reveal that Respondent discharged Michael Doklia and Judith Blechar on July 2, 1979, because of their union activities. Such conduct obviously had an effect on the election held on November 2, 1979. Accordingly, it is recommended that Objection 4, in such regard, be sustained.

The facts set forth previously reveal that the facts are insufficient to establish that Respondent discharged Michael Doklia and Judith Blechar because they participated and gave testimony in a representation hearing conducted under the Act. Accordingly, it is recommended that Objection 4, in such regard, be overruled.

3. Objection 5

The Petitioner averred that the Employer engaged in conduct affecting the results of the election—by:

5. On or about July 2, 1979, the Employer discharged Leann Moss because of her union activity.

The facts previously set forth reveal that Respondent, on July 2, 1979, discharged Leann Moss because she engaged in union activity. Such conduct obviously had an effect on the results of the election held on November 2, 1979. Accordingly, it is recommended that Objection 5 be sustained.

Having found that Objections 4 (in part) and 5 should be sustained, it is further recommended that the election

held on November 2, 1979, be set aside. Since as set forth later herein, a bargaining order is appropriate, it is further recommended that a new election be held only if the Union so requests it.

H. The Appropriate Bargaining Unit

The General Counsel alleges and Respondent denies that:

All regularly scheduled lithographic production employees assigned to the preparatory and press departments employed at Respondent's 104 Pennsylvania Railroad Avenue, Linden, New Jersey plant but excluding all bindery and cuttery department employees, office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

The parties litigated the question of an appropriate bargaining unit in Case 22-RC-7881. The above referred to unit was the unit found by the Regional Director in such case. Respondent disputed the appropriateness of such unit in Case 22-RC-7881, and continues in this case to dispute the appropriateness of the unit. In effect, Respondent continues to preserve its objections to said unit. Newly discovered or unavailable evidence has not been presented in this case on the unit question. Nothing in this proceeding, including a review of the transcripts in Case 22-RC-7881, persuades that the Board should reconsider the decision as to the unit determined in Case 22-RC-7881. I find that the unit as found in Case 22-RC-7881, and as alleged in this case, constitutes an appropriate bargaining unit of Respondent's employees.

In connection with the above bargaining unit and in connection with the establishment of the employee bargaining complement, the General Counsel and Respondent dispute the status of Glenn Dousa and Tom Prudenti. The transcript record in Case 22-RC-7881, the decision in Case 22-RC-7881 with respect to the unit findings and supervisory status, and a consideration of the record as a whole persuade and require a finding that Glenn Dousa and Tom Prudenti are supervisors of Respondent within the meaning of the Act. The parties further stipulated that Jean Marie Cardona and Harry Good were supervisors within the meaning of the Act. Accordingly, Dousa, Prudenti, Cardona, and Good are excluded from the bargaining unit.

I. The Employee Complement

The facts are clear that the Union made a demand for bargaining, by letter dated May 9, 1979, and received by the Employer on May 11, 1979, and that such demand was rejected by Respondent by letter dated May 14, 1979.

The General Counsel litigated the critical date as to the size of the bargaining unit as May 11, 1979. In this regard, the General Counsel established that the bargaining unit complement as of May 11, 1979, was 20 in number. Such 20 employees were:

²⁵ All objections except Objections 3, 4, and 5 were withdrawn by Petitioner and such withdrawal approved by the Regional Director on January 8, 1980.

Mark Lukacs	Karen Savage
Robert Moritz	Linda Savage
Mark Perlach	Judith Blechar
Peter Schulz	Leann Moss
Joseph A. Sudnik	Lois Phillips
James S. Warvel	Peter Veltre
Francisco Cristobal	Michael Doklia
Sharon DeLuca	Louis DeFroscia
Oliver C. Dunnah	Julius Jakubos
Jesse Rodriguez	Aldo Jose Velez

J. Majority Status

The General Counsel established that 16 employees, of the employees in the appropriate bargaining unit as of May 11, 1979, had executed cards authorizing the Union to bargain collectively for such employees. Such cards were to the following effect:

AMALGAMATED LITHOGRAPHERS OF AMERICA LOCAL 1 OF GREATER NEW YORK

Authorization I, the undersigned, an employee of

(Name of Employer) _____ do hereby appoint Local 1, Amalgamated Lithographers of America, my agent to bargain collectively for me with said employer, and authorize the submission of this card to the National Labor Relations Board or to the New York State Labor Relations Board.

Signature _____

Print Name _____

Street Address _____

City _____ State _____

Occupation _____ Date _____

The referred to 16 employees who had authorized the Union to represent them for the purposes of bargaining were: Moritz, Doklia, Blechar, Moss, Schulz, DeFroscia, Lukacs, Velez, Warvel, Veltre, DeLuca, Perlach, Cristobal, Linda Savage, Karen Savage, and Lois E. Phillips. Little dispute appears as to the authenticity of any of the cards excepting those of Lukacs, Velez, Cristobal, and Phillips. As to these four, an examination of the authorization cards and other documentary evidence of the individuals' signatures and the evidence as a whole reveal that the cards purporting to be authorization cards of Lukacs, Velez, and Cristobal were in fact cards by such persons. There were no documents revealing admitted signature of Phillips. However, Blechar's testimony relating to such card and the surrounding circumstances establish such card to be that either signed by Phillips or authorized by Phillips.

In sum, the facts reveal that the Union was designated as of May 11, 1979, as the exclusive collective-bargaining agent of the employees in the appropriate bargaining unit by a majority of the employees in such unit.

K. Demand for Bargaining; Refusal To Bargain

The General Counsel alleges and Respondent admits that:

On or about May 9, 1979, the Union requested and continued to request Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, as the exclusive collective bargaining representative of all employees of the Respondent in the appropriate bargaining unit as set forth before-hand herein.

The General Counsel alleges and Respondent admits that:

Since on or about May 14, 1979, and at all times material herein to date, Respondent did refuse and continues to refuse to bargain collectively with the Union as the exclusive bargaining representative of the employees in the bargaining unit previously set forth herein.

L. The Refusal To Bargain; Violations of Section 8(a)(5) and (1)

The facts are clear that the Union was designated by a majority of the employees in the appropriate collective-bargaining unit at the time that Respondent received, on May 11, 1979, the Union's demand for bargaining. The facts are also clear that Respondent discharged three employees (Doklia, Blechar, and Moss) of the designated union organizing committee within a month of notice of such designation. Further, two of the three persons discharged (Doklia and Blechar) were mentioned by Porter and Birney to employees on May 7, 1979, as having been active in union efforts in the past and in the message in the speech conveyed that it would be expected that the two would be active in the current campaign. Under such circumstances, it is clear that under the first criteria in *Gissel Packing Co.*, 395 U.S. 575, a bargaining order remedy is warranted.

As the Board said in *Philadelphia Ambulance Service, Inc.*, 238 NLRB 1070 (1978):

In *N.L.R.B. v. Gissel Packing Co., Inc.*, the Supreme Court, in approving the Board's use of a bargaining order in the cases before it, depicted two situations in which such orders could appropriately be given. The first involves "exceptional cases" marked by unfair labor practices which are so "outrageous" and "pervasive" that traditional remedies cannot erase their coercive effects with the result that a fair election is rendered impossible. The second situation involves "less extraordinary cases . . . which nonetheless still have the tendency to undermine majority strength and impede the election processes." In the latter situation, the Court stated a bargaining order should issue where the Board finds that "the possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight, and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order."

In *Gissel*, the Supreme Court referred to a third category of cases as is revealed by the following excerpt from the Court's Opinion:

We emphasize that under the Board's remedial power there is still a third category of minor or less extensive unfair labor practices, which, because of their minimal impact on the election machinery, will not sustain a bargaining order. There is, the Board says, no *per se* rule that the commission of any unfair practice will automatically result in a § 8(a)(5) violation and the issuance of an order to bargain. See *Aaron Brothers, supra*.

It is clear under the criteria mentioned above that the unfair labor practice discharges are pervasive and destroyed the possibility of a fair election, that the effect of such unfair labor practices is continuing and that it is reasonable to believe that the lingering effects of the unfair labor practices would continue unless there is a bargaining order issued.

Under Board law and under such circumstances as herein, the obligation to bargain is fixed as of the date of demand, and a finding of violation is fixed as of that date. Considering all of the foregoing, it is concluded and found, as alleged, that Respondent has engaged in conduct violative of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It having been found that Respondent discharged Michael Doklia, Judith Blechar, and Leann Moss, in violation of Section 8(a)(3) and (1) of the Act, the recommended Order will provide that Respondent offer each reinstatement to his or her job, and make each whole for loss of earnings or other benefits, and with interest thereon, within the meaning and in accord with the Board's decisions in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977),²⁶ except as specifically modified by the wording of such recommended Order.

It having been found that Respondent has refused to collectively bargain with the Union since May 11, 1979, and thereby has engaged in conduct violative of Section 8(a)(5) and (1) of the Act, it will be recommended that Respondent cease and desist from such conduct and notify the Union of any unilateral changes in terms and

conditions of employment undertaken since May 11, 1979, revoke such changes if requested by the Union, and bargain collectively about such changes or otherwise, upon request by the Union. Provided that as to any unilateral changes as may have been made, absent a request for revocation of changes by the Union, this Order does not require revocation of changes.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that Respondent cease and desist from in any other manner interfering with, restraining, and coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Howard Press, Inc., Respondent, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Michael Doklia, Judith Blechar, and Leann Moss, Respondent has discouraged membership in a labor organization by discriminating in regard to tenure of employment, thereby engaging in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.

4. All regularly scheduled lithographic production employees assigned to the preparatory and press departments employed at Respondent's 104 Pennsylvania Railroad Avenue, Linden, New Jersey plant but excluding all bindery and cutters department employees, office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. On May 11, 1979, and thereafter, a majority of Respondent's employees in the unit described above designated the Union as their representative for the purpose of collective bargaining with Respondent.²⁷

6. At all times since May 11, 1979, the Union has been and is now the exclusive representative of the employees in the unit described above for the purposes of collective bargaining and, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all employees in said unit for the purposes of collective bargaining.

7. By virtue of Respondent's unfair labor practices committed on May 7, 1979, Respondent's obligation to bargain under the surrounding circumstances was fixed as of May 11, 1979, and Respondent's refusal to bargain on May 14, 1979, in the context of its May 7, 1979, conduct, constituted a refusal to bargain with the Union with respect to the employees in the above referred to

²⁶ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

²⁷ The General Counsel alleged such status as of May 7, 1979. The litigation, however, concerned the status as of May 11, 1979.

bargaining unit as of May 11, 1979, and such conduct constituted conduct violative of Section 8(a)(5) and (1) of the Act.

8. By the foregoing and by interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.

9. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER²⁸

The Respondent, Howard Press, Inc., Linden, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing, upon request, to bargain collectively with the Union regarding employees in the appropriate unit. The appropriate collective-bargaining unit is:

All regularly scheduled lithographic production employees assigned to the preparatory and press departments employed at Howard Press, Inc.'s 104 Pennsylvania Railroad Avenue, Linden, New Jersey plant but excluding all bindery and cutters department employees, office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

(b) Discharging, or otherwise discriminating against, employees in regard to hire or tenure of employment, or any term or condition of employment because of their union or protected concerted activities.

(c) Threatening employees with loss of jobs and other reprisals because of their union activities or protected concerted activities.

(d) Creating the impression that it keeps under surveillance employees' activities in support of the Union.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Notify the Union as regards any unilateral changes in terms and conditions of work of employees in the above referred to collective-bargaining unit, made since May 11, 1979, and if requested by the Union, revoke such changes as may have been made, provided that,

absent a request by the Union, nothing in this Order requires a revocation of such unilateral changes.

(b) Upon request by the Union, bargain collectively as regards any unilateral changes, if any, made as referred to above since May 11, 1979.

(c) Upon request, bargain collectively with the Union as the collective-bargaining representative for all employees in the above referred to appropriate unit and, if agreement is reached, reduce said agreement to writing.

(d) Offer to Michael Doklia, Leann Moss, and Judith Blechar immediate and full reinstatement to his or her former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his or her seniority or other rights previously enjoyed, and make each whole for any loss of pay or other benefits suffered by reason of the discrimination against him in the manner described above in the section entitled "The Remedy."

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(f) Post at Respondent's plant at Linden, New Jersey, copies of the attached notice marked "Appendix."²⁹ Copies of said notice, on forms provided by the Regional Director Region 22, after being duly signed by Respondent's representatives, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the allegations of unlawful conduct not specifically found to be violative herein be dismissed.

IT IS FURTHER ORDERED that Objection 3 in Case 22-RC-7881 be overruled, that Objection 4 in same said case be sustained in part (relating to the discharges of Doklia and Blechar because of their union activity), be overruled in part (relating to the discharges of Doklia and Blechar because of testimony or participation in the representation hearing), and that Objection 5 be sustained, and that the election held in Case 22-RC-7881 be set aside and that a new election be held only if the Union so requests.

²⁸ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

²⁹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."